



NEW AMERICA
FOUNDATION

July 19, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Presentation
WT Docket No. 12-70 (Service Rules for AWS-4 in 2000-2020 and 2180-2200)
WT Docket No. 12-69 (Promoting Interoperability in 700 MHz Spectrum)
WT Docket No. 10-4 (Signal Booster Rules to Improve Wireless Coverage)
WT Docket No. 11-49 (Waiver Request by Progeny of Certain 900 MHz Rules)

Dear Ms. Dortch:

On July 17, 2012, Michael Calabrese of the New America Foundation, Harold Feld of Public Knowledge, and Joel Kelsey of Free Press met as representatives of the Public Interest Spectrum Coalition (PISC) with Ruth Milkman, James Schlichting and John Leibovitz of the Wireless Telecommunications Bureau. The PISC representatives addressed a number of different proceedings, as referenced above.

Regarding the Commission's proposed assignment of new AWS-4 terrestrial mobile service licenses to the incumbent 2 GHz MSS licensee, thereby permanently waiving the ATC "integrated services" rule that has restricted flexible use of MSS spectrum (both the S band and the L band) for terrestrial-only deployments, the PISC representatives reiterated the argument in their Comments and Reply Comments that a number of public interest obligations should be imposed in exchange for the multi-billion dollar value of this spectrum grant. The PISC representatives observed that, as documented in their Comments filed in the proceeding, Wall Street analysts have estimated the incremental net value of the proposed AWS-4 license grants to be on the order of \$4 to \$6 billion. The advocates reiterated their view that the Commission should follow the precedent it set in response to essentially the same request for MSS license transfers and a limited waiver of the integrated service rules granted to LightSquared Subsidiary LLC ("LightSquared") in 2009 and 2010, respectively. LightSquared compensated the public for

the grant of valuable spectrum rights by agreeing to a series of compelling public interest obligations that included deployment of a wholesale-only LTE network, rapid buildout requirements, and a requirement to seek Commission approval for any sale or leasing of more than 25 percent of the network's capacity in an economic market area to one of the two largest terrestrial carriers by market share. In multiple filings, the same PISC groups attending this meeting have stated that these obligations were appropriate and likely to promote competition, innovation, consumer choice and rural coverage.¹

The PISC representatives asserted that the assignment of these valuable AWS-4 licenses without an auction should be subject to four specific public interest conditions that could recoup value for the public, while also promoting wireless industry competition, innovation and spectrum efficiency, particularly in rural areas.

First, for the duration of the initial license period, the AWS-4 licensee should make up to 50 percent of its capacity available in each Economic Area for open wholesale leasing, or for roaming by other carriers, on a non-discriminatory basis at fair and reasonable rates.

Second, whether or not the AWS-4 licensee is required to make up to 50 percent of its capacity available for wholesale leasing and roaming, the Commission should require that the licensee seek Commission approval before making more than 25 percent of the licensee's data traffic capacity within any Economic Area available to any single carrier, or to any other entity, regardless of whether that capacity is accessed on a wholesale basis, roaming basis, under a spectrum manager lease arrangement, or as part of a network sharing agreement. The PISC representatives noted that there was no need to limit the trigger on this approval to the two largest terrestrial carriers, as the Commission did in the *SkyTerra* license transfer noted above.

Third, any buildout requirements should be augmented by a "use it or share it" license condition that would permit other parties to make use of unused AWS-4 spectrum on a localized basis until such time as the licensee actually deploys service. There appears to be no reason to limit use of the TV Bands Databases to the TV band alone, as such databases likewise could be used to regulate contingent access to fallow portions of other bands including the S Band.² While

¹ See Comments of Free Press, Media Access Project, New America Foundation and Public Knowledge, *In the Matter of LightSquared LLC Request for Modification of its Authority for an Ancillary Terrestrial Component*, Order and Authorization, SAT-MOD-20101118-00239 (Dec. 9, 2010); Public Interest Organizations, Consolidated Opposition to Applications for Review and Petition for Reconsideration, *In the Matter of LightSquared LLC Request for Modification of its Authority for an Ancillary Terrestrial Component*, SAT-MOD-20101118-00239 (Mar. 14, 2011), at 7.

² See Comments of the Public Interest Spectrum Coalition, *In the Matter of Promoting More Efficient Use of Spectrum Through Dynamic Spectrum Use Technologies*, ET Docket No. 10-237 (Feb. 28, 2011). See also Michael Calabrese, "Use it or Share it: Unlocking the Vast Wasteland of Fallow Spectrum," Working Paper, presented at 39th Research Conference on Communication, Information and Internet Policy, September 25, 2011.

temporary local use of fallow spectrum may not have been practical as recently as last year, the Commission's ongoing certification of geolocation databases to govern opportunistic and conditional access by frequency-hopping radios to vacant TV channels makes this entirely feasible. At a minimum, the 20 MHz being acquired from DBSD is apparently fallow spectrum and is likely to remain so for many years under the modest, population-based buildout requirements proposed in the Commission's NPRM.

Fourth, the Commission should impose unjust enrichment penalties on sale of the AWS-4 licenses to either of the two largest mobile carriers. This penalty could be modeled on the rules governing the clawback of benefits reserved for designated entity licensees (DEs). This condition would prevent DISH from unjustly realizing a windfall if it transfers or assigns the spectrum to one of the two largest CMRS and wireless data carriers within a specified number of years.

With respect to the Lower 700 MHz interoperability proceeding, the PISC representatives summarized briefly a few of the points made in their Comments and Reply Comments. The PISC representatives emphasized that the Commission has clear authority to mandate interoperability as a license condition and to modify licenses under Section 316 at any time and for any purpose subject to a finding that it would "promote the public interest, convenience and necessity." The PISC representatives also emphasized that without 700 MHz band interoperability, competitive carriers that are A Block licensees would face enormous additional obstacles to deploying LTE and acquiring popular devices in an economic fashion. It was A Block licensees' – and the Commission's – reasonable expectation that Band Class 12, introduced *prior to* Auction 73, would govern the Lower 700 MHz Band spectrum. It was only post-auction, because of AT&T's bad-faith effort to leverage its influence over 3GPP to minimize its own risk of interference and undermine competitive carriers, that proprietary Band Class 17 was created at AT&T's behest, undermining a history of CMRS interoperability on newly designated bands.

With respect to the Signal Booster proceeding referenced above, the PISC representatives inquired on the status and timing of a Commission order. The New America Foundation and Public Knowledge filed comments in July, 2011, which conveyed the view that the licensing-by-rule approach proposed in the Commission's NPRM, under section 307(e), is the most practical approach that would also ensure the greatest benefit for consumers by promoting competition and innovation in both the market for signal booster peripherals and among ISPs. The PISC representatives reiterated their view that consumers, booster manufacturers and smaller, regional and rural carriers would be harmed by a booster market controlled in any way by the dominant carrier duopoly.

The advocates made the additional point that since the boosters that are most valuable and desired by consumers are carrier-agnostic, they automatically and simultaneously amplify

most carrier signals. In that case, it would be a fiction for the Commission to maintain that the authority for a consumer to transmit *on a variety of different carrier frequencies* can derive from the license assigned to a carrier for one of those frequencies. Licensing-by-rule – subject to certification of the device’s compliance with a technical safe harbor that would avoid harmful interference – would best conform to the principles of the Communication Act and also yield the lowest transaction costs.

Finally, with respect to Progeny’s request for a waiver of certain rules governing the M-LMS at 902-928 MHz while, *inter alia*, “minimizing interference to unlicensed users,” the PISC representatives urged the Commission to play a pro-active role in defining the purpose, parameters and outcomes of additional testing needed to determine if the rule changes would cause harmful interference to WISPs and other unlicensed users of the band. The PISC representatives emphasized that they were not necessarily opposed to changing the rules to accommodate additional uses of the band, including Progeny’s technology. At the same time, the advocates asserted that well-defined and transparent testing that include relevant parties and using metrics defined by the Commission is the best way to resolve objectively whether harmful interference to existing uses precludes the proposed change in the rules.

Respectfully submitted,

/s/

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